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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/823,379	04/13/2004	Carl E. Whitcomb	WHIT/0019.A	3362

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EXAMINER

NGUYEN, SON T

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 06/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/823,379

Applicant(s)

WHITCOMB, CARL E.

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-64 is/are pending in the application.
- 4a) Of the above claim(s) 25,30,39,42-59 and 64 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-24,26-29,31-38,40,41 and 60-63 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-4,9-11,13,14,26-28,31,35,60,62,63** are rejected under 35 U.S.C. 103(a) as being unpatentable over Single (GB 2350272A) in view of Waterer (US 603492).

For claim 1, Single teaches a plant container, comprising: a sidewall 5 having a plurality of shoulders 26; and a base 18,27 supported on the shoulders, the base having an upwardly facing surface. However, Single lacks the base having a plurality of radially directed channels. Waterer teaches a plant container having a base 21 with radially directed channels 22. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ radially directed channels as taught by Waterer on the base of Single in order to permit water to flow from the central area (page 1, lines 95-100 of Waterer).

For claim 2, Single as modified by Waterer (emphasis on Single) further teaches wherein the sidewall and the base are separable.

For claim 3, Single as modified by Waterer (emphasis on Single) further teaches wherein the sidewall is a flexible panel that is bent and fastened in a closed curvilinear shape (see figs. 1 & 2 of Single).

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For claim 4, Single as modified by Waterer (emphasis on Single) further teaches wherein fastening the panel around the base constrains displacement of the base.

For claim 9, Single as modified by Waterer (emphasis on Single) further teaches wherein the upwardly facing surface has a center and a perimeter. However, Single as modified by Waterer (emphasis on Single) lacks wherein the channels extend over more than half the distance between the center and the perimeter. In addition to the above, Waterer teaches the channels extend over more than half the distance between the center and the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the channels extend over more than half the distance between the center and the perimeter as further taught by Waterer on the base of Single as modified by Waterer in order to provide adequate water flow guide away from the center.

For claim 10, Single as modified by Waterer (emphasis on Single) further teaches wherein the plurality of shoulders are inwardly extending, outwardly extending, or combinations thereof.

For claim 11, Single as modified by Waterer (emphasis on Single) further teaches wherein the base has a generally circular perimeter.

For claim 13, Single as modified by Waterer (emphasis on Single) further teaches wherein the plurality of shoulders are provided by a plurality of protuberances.

For claim 14, Single as modified by Waterer (emphasis on Single) further teaches wherein the plurality of protuberances have a proximal opening 7 in communication with a distal opening 7.

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For claims 26-28, Single as modified by Waterer lacks the channels being between 0.1 and 1 inches tall, between 0.15 and 0.75 inches tall, or between 0.25 and 0.5 inches tall. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the channels of Single as modified by Waterer be between 0.1 and 1 inches tall, between 0.15 and 0.75 inches tall, or between 0.25 and 0.5 inches tall, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 31, Single as modified by Waterer (emphasis on Single) further teaches wherein the center of the proximal opening is positioned higher than the center of the distal opening when the panel is positioned upright (see fig. 2).

For claim 35, see claim 9.

For claim 60, see claim 1.

For claim 62, Single as modified by Waterer further teaches wherein the channels are substantially free from obstructions to radial root growth.

For claim 63, Single as modified by Waterer (emphasis on Waterer) further teaches wherein the plurality of channels include at least eight channels (see fig. 5 of Waterer).

3. **Claims 5-8,12,15-24,29,32-34,36-38,40,41,61** are rejected under 35 U.S.C. 103(a) as being unpatentable over Single as modified by Waterer as applied to claim 1 above, and further in view of Anderson (US 4628634).

For claim 5, Single as modified by Waterer lacks wherein the upwardly facing surface is convex. Anderson teaches a plant container comprising a base 14' having an upwardly convex facing surface 15,18. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ an upwardly convex facing surface as taught by Anderson on the base of Single as modified by Waterer in order to drain off excess water from the center and to guide the root growth in proper direction.

For claim 6, Single as modified by Waterer and Anderson (emphasis on Anderson) further teaches wherein the convex surface has a shape selected from corical, semispherical, elliptical; and irregular.

For claim 7, Single as modified by Waterer and Anderson lacks wherein the convex surface has a perimeter and a center that is between 1 and 2 inches higher than the perimeter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the convex surface of Single as modified by Waterer and Anderson with a perimeter and a center that is between 1 and 2 inches higher than the perimeter, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 8, Single as modified by Waterer and Anderson (emphasis on Anderson) further teaches wherein the convex surface has a shape comprising a central arch 15 and a surrounding semispherical region 16,17 (see fig. 4 of Anderson).

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For claims 12 & 15, in addition to the above, Anderson teaches wherein the perimeter of the base has a plurality of projections 17. It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ projections as further taught by Anderson on the perimeter of the base of Single as modified by Waterer and Anderson in order to further secure the base onto the sidewall of the container.

For claim 16, Single as modified by Waterer and Anderson lacks wherein the proximal openings are larger than the distal opening. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the proximal openings are larger than the distal opening in the container of Single as modified by Waterer and Anderson , since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable ranges until the desired effect is achieved involves only routine skill in the art. In re Aller, 105 USPQ 233.

For claim 17, see claim 6.

For claim 18, see claim 8.

For claim 19, see claim 9.

For claims 20 & 21, Single as modified by Waterer and Anderson further teaches the channels having sidewalls (see Waterer fig. 5) are disposed to direct roots toward the protuberances on the container.

For claim 22, Single as modified by Waterer and Anderson lacks wherein the channels extend into the proximal openings of the protuberances. It would have been

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obvious to one having ordinary skill in the art at the time the invention was made to have the channels extend into the proximal openings of the protuberances of the container of Single as modified by Waterer and Anderson, depending on how much root guidance is needed.

For claim 23, Single as modified by Waterer and Anderson lacks wherein the channels have a distal end with a deflecting curve. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the channels of Single as modified by Waterer and Anderson with deflecting curve, depending on how much root guidance is needed.

For claim 24, Single as modified by Waterer and Anderson (emphasis on Single) further teaches wherein the individual protuberance is one of the plurality of protuberances that provide the plurality of shoulder.

For claim 29, Single as modified by Waterer and Anderson (emphasis on Anderson) further teaches a central dome 15 directing roots outwardly. See also claim 5.

For claims 32-34,36-38,40-41,61, see the above claims which discuss the same limitations.

Response to Arguments

4. Applicant's arguments filed 3/31/05 have been fully considered but they are not persuasive.

Applicant argued that Waterer is nonanalogous art.

In response to applicant's argument that Waterer is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Waterer teaches a base placed inside a container, which is analogous to the base placed in the container of Single. Whether the base of Waterer holds a plant pot or other elements, that is functional of the base and intended use of the base (see MPEP Section 2114). Functional or intended use of a device is not given patentable weight. If one wishes to use the base of Waterer to contain soil, then the base can hold soil on the top surface.

In any event, as stated in the rejection above, Waterer was relied upon for a teaching of the radially directed channels and not the base because Single already teaches the base. It is the channels of Waterer to direct water to flow from the central area that the Examiner is relying upon to be employed in the base of Single. This idea is extremely old in the art as demonstrated by Waterer. Obviously the motivation to combine Single with Waterer is to direct water to flow from the central area as taught by Waterer of the base of Single.

Applicant argued that Single teaches root control through use of a base that has been treated with a chemical growth retardant which teaches away from the present invention.

Applicant's claim language states "comprising" which is an open term and thus, indicate that the container can have other elements therein. It's irrelevant whether Single has chemical growth retardant or not since, structurally, Single teaches the claimed invention, except for the channels, which is taught by Waterer. Applicant's claim language is extremely broad, thus, the language will be interpret to the broadest extent.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Son T. Nguyen
Primary Examiner
Art Unit 3643

stn